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10/756,916	01/13/2004	Maurice Eduardus Theodorus van Esbroeck	V0028/296361	5156

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EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/756,916

Applicant(s)

VAN ESBROECK ET AL.

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Detailed Action

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in the Netherlands on 7-13-01 and in WIPO on 7-15-02. It is noted, however, that applicant has not filed a certified copy of these patent applications as required by 35 U.S.C. 119(b).

Information Disclosure Statement

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

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The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it contains legal phraseology in particular the word "said" in line 3. Correction is required. See MPEP § 608.01(b).

4. The incorporation of essential material in the specification by reference to a foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference. The amendment must be accompanied by an affidavit or declaration executed by the applicant, or a practitioner representing the applicant, stating that the amendatory material consists of the same material incorporated by reference in the referencing application. See *In re Hawkins*, 486 F.2d 569, 179 USPQ 157 (CCPA 1973); *In re Hawkins*, 486 F.2d 579, 179 USPQ 163 (CCPA 1973); and *In re Hawkins*, 486 F.2d 577, 179 USPQ 167 (CCPA 1973).

5. The disclosure is objected to because of the following informalities: on page 7 line 30 it appears that "45 degrees C" in line 30 should be - -45 degrees- -.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "in particular" in line 1 is indefinite in that it is unclear to what products other than meat the device is to be used with.

Claims 2-47 depend from rejected claim 1 and include all of the limitations of claim 1 thereby rendering these dependent claims indefinite.

Claim 41 recites the limitation "the liquid an/or solid massaging substance" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20, 22-25, 35-36 and 42-45 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,791,705 to Corominas.

Referring to claim 1, Corominas discloses a device for massaging meat products comprising, at least one treatment section – at 22, having a space for accommodating the

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products – see for example figures 4-5, which space comprises a treatment device – at 21 for treating the products, and a discharge device – at 12-17, for discharging the products from the space of the treatment section, wherein the discharge device can be brought into an active and an inactive operating state – see for example figure 2.

Referring to claim 2, Corominas discloses the discharge device can be moved between an active and an inactive position with the aid of an actuating device – at 12 and/or 16.

Referring to claim 3, Corominas discloses the treatment section – at 22, is provided with its own actuating device – see for example figure 1. A plurality of treatment sections has not been claimed and therefore the Corominas reference reads on the claim with only one treatment device.

Referring to claim 4, Corominas discloses the actuating device is common to a plurality of treatment sections – see for example figures 1-5.

Referring to claim 5, Corominas discloses the actuating device – at 16, comprises a rod, which can be actuated from outside the device – see for example figure 1.

Referring to claim 6, Corominas discloses the actuating device comprises a piston cylinder unit – at 16 – see for example figure 1.

Referring to claim 7, Corominas discloses the actuating device – at 12, comprises a cam track mechanism – see for example figure 1.

Referring to claim 8, Corominas discloses the actuating device – at 12, 16 is designed to generate a control signal (inherent) after the discharge device of the treatment section has been moved into the active position – see for example figures 1-2 and columns 5-6.

Referring to claims 9-10, Corominas discloses at least two treatment sections – at 22, through which the products are to pass in succession – see for example figures 1-5. The limitations of the actuating device being designed to move the discharge device of the second treatment section into an active position in order for the second treatment section to be emptied before moving the discharge device of the first treatment section into its active position and the actuating device being designed to move the discharge device of the first and the second treatment section into an active position essentially at the same time in order for the first and the second treatment section to be emptied, constitute functional language which does not further limit the structure of the claimed apparatus and therefore these limitations have not been considered, see *In re Danly*, 263 F. 2d 844, 847, 120 USPQ 528,531 (CCPA 1959) and MPEP section 2114.

Referring to claim 11, Corominas discloses the treatment device comprises at least one massaging element – at 21, the discharge device – at 12-17, interacting with the at least one massaging element in order to reach the active and the inactive position – see for example figure 1 where the interaction is indirect through items 10-11.

Referring to claim 12, Corominas discloses the treatment device is designed to be set in motion with the aid of a drive – at 11.

Referring to claim 13, Corominas discloses at least two treatment sections – at 22, and wherein the movement of the different treatment devices of the different treatment sections differs – see for example figures 1-5.

Referring to claim 14, Corominas discloses the treatment device is designed to be rotated – via 11.

Referring to claim 15, Corominas discloses at least two treatment sections – at 22, the different treatment devices of the different treatment sections having a common bearing – proximate 11 – see for example figure 1.

Referring to claim 16, Corominas discloses the bearing comprises a ring – see for example figure 1, along the circumference of which ring a number of wheels coupled to the treatment device are movable – see for example figure 1 where the number of wheels is zero. Alternatively, there are a number of wheels – proximate 11 as seen in figure 2 attached to a circumference of a ring of a bearing.

Referring to claim 17, Corominas discloses the different treatment devices of the different treatment sections are mounted on the same shaft – see proximate 11 in figure 2.

Referring to claim 18, Corominas discloses the rotation takes place relative to an essentially horizontal axis of rotation – see for example figures 1-5.

Referring to claim 19, Corominas discloses the treatment device – at 21, comprises a least one surface, which is oriented at an angle to the direction of movement thereof – see for example figures 2-5.

Referring to claim 20, Corominas discloses the treatment device – at 21, comprises a number of surfaces which are at an angle to one another and as seen in cross section form one or more points – see for example figures 4-5.

Referring to claim 22, Corominas discloses the points are arranged at a distance from one another – see for example figures 4-5.

Referring to claim 23, Corominas discloses the points are formed asymmetrically – see for example figures 4-5.

Referring to claim 24, Corominas discloses the dimensions of the points differ from one another – see for example figures 4-5.

Referring to claim 25, Corominas discloses the surfaces are integral with a wall of the treatment section – at 22 – see for example figures 4-5.

Referring to claim 35, Corominas discloses the treatment section – at 22, comprises a rotatable drum – at 10, which defines the space, the drum has an axis of rotation and a direction of rotation – via 11 – see for example figure 1.

Referring to claim 36, Corominas discloses the treatment device – at 21, comprises a series of blades, which are arranged in the space and operate so as to cut products in the space in the direction of rotation – see for example figures 1-5.

Referring to claims 42 and 44, Corominas discloses the discharge device – at 12-17, is designed in its active state, to discharge the products and to return the solid massaging substance – at 21, located in the corresponding treatment section to this treatment section, and the solid massaging substance – at 21, not being discharged – see for example figures 1-5.

Referring to claim 43, Corominas discloses the discharge device – at 12-17, is provided with perforations – see for example figures 1-5.

Referring to claim 45, Corominas discloses at least a part of a surface of the space of each treatment section is provided with a profile – see for example figures 1-5.

Claim Rejections - 35 USC § 103

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8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Corominas as applied to claim 20 above. Corominas does not disclose the vertex angle of the points is 45 degrees however it appears that the device of Corominas would perform equally as well with the vertex angle being 45 degrees and it would have been obvious to one of ordinary skill in the art to take the device of Corominas and add the vertex angle of the points as being 45 degrees, so as to allow for the treatment device to contact and treat the meat product thoroughly during use.

Claims 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corominas as applied to claim 19 above, and further in view of U.S. Patent No. 6,105,490 to Horn et al.

Referring to claim 26, Corominas does not disclose the at least one surface is movable along a stationary wall of the treatment section. Horn et al. does disclose the at least one surface – at 42, is movable along a stationary wall – at 12,18 – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Corominas and add the treatment device movable along a stationary wall of Horn et al., so as to allow for the moving parts to be located inside the device and thus make the device safer when in use.

Referring to claim 27, Corominas as modified by Horn et al. further discloses an edge of the at least one surface, the edge facing the wall, is situated at a distance from the wall – see for example figures 4-5 of Corominas and figure 1 of Horn et al.

Referring to claim 28, Corominas as modified by Horn et al. further discloses the at least one surface is arranged hingedly, the hinge axis being essentially parallel to the axis of rotation – see for example – at 36 in figure 1 of Horn et al.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Corominas as modified by Horn et al. as applied to claim 28 above, and further in view of U.S. Patent No. 4,836,099 to Thirode. Corominas as modified by Horn et al. further discloses the at least one surface is moved into a predetermined hinge position – see for example figure 1 of Horn et al. Corominas as modified by Horn et al. does not disclose at least one spring member for biasing the hinge. Thirode does disclose a spring member – at 16, for biasing the hinge – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Corominas as modified by Horn et al. and add the spring biasing member of Thirode, so as to allow for the device to be adjustable for different operating conditions.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Corominas as applied to claim 1 above, and further in view of U.S. Patent No. 5,284,085 to Palm. Corominas does not disclose the treatment device comprises a massaging-substance feed device, which is arranged in the space of the treatment section for supplying a massaging substance. Palm does disclose the treatment device comprises a massaging-substance feed device – at 9,10, which is arranged in the space of the treatment section for supplying a massaging substance – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Corominas and add the massaging-substance feed device of Palm, so as to allow for the food product to be conditioned during operation.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Corominas as applied to claim 1 above, and further in view of U.S. Patent No. 4,446,779 to Hubbard et al. Corominas does not disclose a device for the transfer of heat via a peripheral wall of the space of the treatment section. Hubbard et al. does disclose a device for the transfer of heat – at 27, via a peripheral wall of the space of the treatment section – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Corominas and add the heat transfer device of Hubbard et al., so as to allow for the environment inside the device to be controlled.

Claims 33-34, 37-38 and 46-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corominas as applied to claim 1 above, and further in view of U.S. Patent No. 4,214,518 to Petsche.

Referring to claim 33, Corominas does not disclose needles projecting into the space of the treatment section. Petsche does disclose needles – at 114, 116, projecting into the space of the treatment section – see for example figure 3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Corominas and add the needles of Petsche, so as to allow for the food product to be properly conditioned during use.

Referring to claim 34, Corominas as modified by Petsche further discloses the needles can be moved in a controllable manner in their longitudinal direction – see for example figure 3 of Petsche.

Referring to claim 37, Corominas does not disclose the treatment device comprises a rotatable roller which is arranged in the space and the axis of rotation of the roller is parallel to the axis of rotation of the drum, which roller acts to massage deformable products. Petsche does

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disclose the treatment device comprises a rotatable roller – at 116 which is arranged in the space and the axis of rotation of the roller is parallel to the axis of rotation of the drum – at 8, 12, which roller acts to massage deformable products – see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Corominas and add the rotatable roller of Petsche, so as to allow for the food product inside the device to be conditioned during use.

Referring to claim 38, Corominas as modified by Petsche further discloses the roller is provided with grooves on its outer surface – see for example figure 9 of Petsche.

Referring to claim 46, Corominas does not disclose different treatment sections are formed in a common space, provision being made for a removable treatment device and removable partitions between the different treatment sections. Petsche does disclose different treatment sections are formed in a common space, provision being made for a removable treatment device – at 114, 116, and removable partitions – see proximate 128, 134 in figure 9, between the different treatment sections. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Corominas and add the removable treatment device of Petsche, so as to facilitate maintenance and cleaning of the device.

Referring to claim 47, Corominas does not disclose the at least one treatment device has a wall which is at least partly removable. Petsche discloses the at least one treatment device – at 114, 116 of Petsche, has a wall which is at least partly removable – see for example proximate 128 and 134 of figure 9. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Corominas and add the removable treatment device of Petsche, so as to facilitate maintenance and cleaning of the device.

Claims 31 and 39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corominas as applied to claim 1 above, and further in view of U.S. Patent No. 4,517,888 to Gould.

Referring to claim 31, Corominas does not disclose a peripheral wall of the space of the treatment section is provide with perforations, a chamber, which is open at least on the side of the peripheral wall being formed outside the space, adjacent to the peripheral wall, in order to supply or discharge a treatment medium to or from the space via the perforations. Gould does disclose a peripheral wall – at 30-34, of the space of the treatment section is provide with perforations, a chamber – at 42-48, which is open at least on the side of the peripheral wall being formed outside the space, adjacent to the peripheral wall, in order to supply or discharge a treatment medium to or from the space via the perforations – see for example figure 3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Corominas and add the perforated wall and chamber of Gould, so as to allow for the food product inside the device to be conditioned during use.

Referring to claim 39, Corominas does not disclose the discharge device comprises a product guiding part, a discharge end of which is located outside the treatment section. Gould does disclose the discharge device comprises a product guiding part – at 62, a discharge end of which is located outside the treatment section – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Corominas and add the product guiding part of the discharge device of Gould, so as to allow for the food product to be quickly moved for further processing.

Referring to claim 40, Corominas as modified by Gould further discloses the product-guiding part – at 62 of Gould, is in the form of a gutter – see for example figure 1 of Gould.

Referring to claim 41, Corominas discloses the discharge device is designed, in its active operating state, to discharge both the products and the liquid and/or solid massaging substance located in the corresponding treatment section. Gould does disclose the discharge device is designed, in its active operating state, to discharge both the products and the liquid and/or solid massaging substance located in the corresponding treatment section – see for example figure 1 and column 5 lines 22-30. Therefore it would have been obvious to take the device of Corominas and add the discharge device of Gould, so as to allow for the food product to be quickly moved for further processing.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to meat massaging/tenderizing devices in general:

U.S. Pat. No. 5,492,499 to Van Haren et al. – shows meat-massaging device

U.S. Pat. No. 5,947,015 to Laurbak – shows meat-massaging device

U.S. Pat. No. 6,007,418 to Suhner – shows meat-massaging device

U.S. Pat. No. 6,662,712 to Ludwig – shows meat-massaging device

JP Pat. No. 3-172138 – shows meat-massaging device

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EP Pat. No. 0575025 – shows meat-massaging device

EP Pat. No. 0584853 – shows meat-massaging device

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Parsley
Patent Examiner
Art Unit 3643



PETER M. POON
SUPERVISORY PATENT EXAMINER

8/9/04